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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ) 24MJ4013

)

vs.

Buffalo, New York

DONDE LINDSAY, ) June 25, 2024

Defendant. 2:30 p.m.

- - - - - X

**CONTINUATION OF DETENTION HEARING**

**Transcribed from an Electronic Recording Device**

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MARIAN W. PAYSON

UNITED STATES MAGISTRATE JUDGE

**FOR PLAINTIFF: ROBERT MARANGOLA, ESQ.**

Assistant United States Attorney

100 State Street

Rochester, New York 14614

**FOR DEFENDANT: JOHN J. GILSENAN, ESQ.**

Osborn, Reed & Burke, LLP

120 Allens Creek Road, Suite 150

Rochester, New York 14618

K. Nenni, USPO

**COURT REPORTER: Karen J. Clark, Official Court Reporter**

**Karenclark1013@AOL.com**

**100 State Street**

**Rochester, New York 14614**

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2 P R O C E E D I N G

3 \* \* \*

4  
5 THE CLERK: This is the case of United  
6 States of America versus Donde Lindsay, 24MJ4013.

7 MAGISTRATE JUDGE PAYSON: At the last court  
8 appearance, I raised two issues. One was whether Mr.  
9 Lindsay would be accepted into the Salvation Army  
10 program if I determined that a release condition  
11 centered around that would be appropriate.

12 Officer Nenni, would you place on the record  
13 what you learned?

14 PROBATION: Yes, your Honor. The defendant  
15 had an intake assessment with the Salvation Army  
16 yesterday and was accepted into the program and he could  
17 be placed as early as tomorrow afternoon.

18 MAGISTRATE JUDGE PAYSON: Okay. And Mr.  
19 Marangola, I put you on notice of my consideration of  
20 Mr. Lindsay's placement at the Salvation Army so you  
21 could make a determination about whether you would seek  
22 a stay in the event that I did impose release  
23 conditions, again, centered around his residing and  
24 participating in the Salvation Army program. Have you  
25 had an opportunity to consider that?

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2 MR. MARANGOLA: I have, judge. And yes, I  
3 would be seeking a stay.

4 MAGISTRATE JUDGE PAYSON: Okay. So let me  
5 indicate for the record, it is my intention to deny the  
6 government's motion for detention, as I think I  
7 indicated at the last court appearance. I do think it  
8 is a close case, and I'm mindful that the government has  
9 proffered what, at this stage, appears to be reasonably  
10 strong evidence certainly in support of the drug  
11 charges. As to the firearms charge, the government has  
12 proffered evidence that seems reasonably strong in  
13 support of the proposition that Mr. Lindsay unlawfully  
14 possessed a firearm at his residence at a time when he  
15 was involved in drug dealing and it was a loaded  
16 firearm. Plainly, that is dangerous. And in the event  
17 that there is a combination of drugs and firearms, that  
18 is a dangerous mix.

19 I acknowledged that this case gives rise to  
20 a rebuttable presumption and that I do find probable  
21 cause that Mr. Lindsay has committed the charges that he  
22 faces here and so the government is entitled to rely on  
23 the presumption.

24 In rebuttal, the defense has come forward  
25 with a proposal that, first, that Mr. Lindsay be

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2 permitted to live with his sister. When I expressed  
3 interest in exploring another avenue, that would be  
4 living at the Salvation Army, the defense indicated that  
5 Mr. Lindsay would be agreeable to and interested in  
6 living at the Salvation Army. In my experience, that is  
7 a structured program that has -- has worked well in a  
8 number of cases in which I have ordered release where,  
9 like this, I find it to be a close case and I wasn't  
10 comfortable releasing somebody to go back to live where  
11 they had been living before. I find that the program is  
12 also good insofar as it generally requires people who  
13 live there to work hard and to be productively engaged.  
14 Not everybody succeeds. I don't want to suggest that  
15 it's been 100 percent success for me. But, in cases  
16 like this, I think it has worked well.

17 Mr. Lindsay certainly has a criminal  
18 history. As he has gotten older, the past offenses are  
19 more in the nature of misdemeanor offenses rather than  
20 felony offenses. And what is significant to me is the  
21 most recent offense, he had a three-year term of  
22 probation that he appears to have completed successfully  
23 without any issues, which suggests to me that Mr.  
24 Lindsay, as an adult, has had better success than he did  
25 as a younger, less mature person, understanding the

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2 importance of complying with supervision and court  
3 requirements and being able to do so. With respect to  
4 the firearm, there is no question that that gives me  
5 significant pause. I do find relevant and significant  
6 what Mr. Gilsenan has proffered, that it is reasonable  
7 to believe that if the government had evidence that Mr.  
8 Lindsay was displaying, discharging, threatening,  
9 somebody in the course of drug dealing with a gun, if  
10 the government had that evidence, I'm sure Mr. Marangola  
11 would have told me about that.

12 MR. MARANGOLA: I don't have that evidence,  
13 I'll state that.

14 MAGISTRATE JUDGE PAYSON: Yes. I'm sure you  
15 would acknowledge that. So we have a gun that was found  
16 in his residence and no evidence that in connection with  
17 the charges here that Mr. Lindsay has committed an act  
18 of violence, has threatened somebody with a gun or has  
19 displayed the gun.

20 So given all of the information that I have,  
21 I believe that the -- that release would be appropriate,  
22 that there are conditions that can be set, but they  
23 would be about as strict as one can get. They would be  
24 Salvation Army with electronic monitoring. Assuming  
25 Salvation Army allows a curfew, which I think they do, I

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2 would set a curfew so he can't be out of the Salvation  
3 Army at night. So I would expect that he would be  
4 working productively during the day, participating in  
5 programs that might be appropriate for him such as  
6 substance abuse programs and treatment, be there at  
7 night, wear an electronic bracelet, so if he is not  
8 there, we would know that, and he would get picked up  
9 and be brought back here, as well as a host of other  
10 conditions that I imagine that counsel are fairly  
11 familiar with. You know, can't be outside of the  
12 Salvation Army, has to comply with the rules and  
13 regulations of the Salvation Army, no possession of any  
14 firearms or dangerous devices or destructive devices,  
15 dangerous weapons, no use of any alcohol, drugs,  
16 controlled substances, drug testing, drug treatment,  
17 reporting to pretrial, reporting to pretrial any contact  
18 with law enforcement. Those are the -- the main  
19 conditions. So that is my intention. That is the basis  
20 of my summary of how I see this case.

21 As I said, I do think it is a close case and  
22 that is why I put Mr. Marangola on notice so he could  
23 think about whether he wishes to seek a stay. And Mr.  
24 Marangola would you be able to file that -- what is  
25 today? By Thursday?

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2 MR. MARANGOLA: Yes, Judge. I'll file that  
3 by Thursday.

4 MAGISTRATE JUDGE PAYSON: Okay. Mr.  
5 Gilsenan, you'll check the docket. If for some reason  
6 Mr. Marangola has not filed that by Thursday, let me  
7 know, I'll put the matter on the calendar for Friday and  
8 set release conditions. So I'm assuming that that will  
9 be filed. I think sometimes it's possible that Mr.  
10 Marangola could change his mind, I think unlikely, and I  
11 imagine if he did change his mind, he would let us know  
12 that.

13 MR. MARANGOLA: I would. I was going to say  
14 that.

15 MAGISTRATE JUDGE PAYSON: Let's go forward  
16 on the assumption that Mr. Marangola is asking the trial  
17 judge to review my determination to set release  
18 conditions, and that is going to have to play out. So  
19 you're going to have to persuade the district court  
20 judge in addition to me that it is appropriate that you  
21 be released. And I don't know how that's going to turn  
22 out, but that is going to happen. That will be the next  
23 stage in these proceedings.

24 Let's go forward in setting a next date for  
25 this case. Do you want -- you withdrew your motion for

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2 a preliminary hearing. Are you asking me to re-set that  
3 or do you want me to put it on just for status. Did I  
4 set a status date? I don't think I did. We just took  
5 off the preliminary hearing and put on today's date,  
6 right?

7 MR. MARANGOLA: I don't think we set a  
8 status date.

9 MAGISTRATE JUDGE PAYSON: No, I don't think  
10 we did.

11 MR. GILSENAN: I have a question. I have  
12 papers that I plan to file in opposition to the  
13 government's motion for a stay. Is that response, is  
14 that directed towards the district court?

15 MAGISTRATE JUDGE PAYSON: Yes.

16 MR. GILSENAN: And if there was to be a  
17 hearing or argument, that would be held before the  
18 district judge, correct?

19 MAGISTRATE JUDGE PAYSON: Correct.

20 MR. GILSENAN: So at this point, I ask the  
21 Court to set another status.

22 MAGISTRATE JUDGE PAYSON: How much time  
23 would you like?

24 MR. GILSENAN: Thirty days, your Honor.  
25 Actually, I begin trial again in Buffalo on the 29th of



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2 July, so any time before that, maybe the week before  
3 that.

4 MAGISTRATE JUDGE PAYSON: The 23rd?

5 MR. GILSENAN: That should work, your Honor.

6 MAGISTRATE JUDGE PAYSON: Nine o'clock.

7 MR. GILSENAN: Yes.

8 MR. MARANGOLA: Nine o'clock on the 23rd?

9 MAGISTRATE JUDGE PAYSON: July 23rd is the  
10 next status date in this case.

11 You're asking for an interest of justice  
12 exclusion?

13 MR. GILSENAN: Yes, your Honor.

14 MR. MARANGOLA: Government joins that  
15 request.

16 MAGISTRATE JUDGE PAYSON: Joint request to  
17 exclude time in the interest of justice is granted.  
18 Time is excluded between today and July 23rd under 18  
19 U.S.C. 3161(h)(7). I find that Mr. Lindsay's interest,  
20 the government's interest and the public's interest in  
21 both a speedy indictment and speedy trial are outweighed  
22 by Mr. Lindsay's interest in having enough time to  
23 discuss the charges more fully with Mr. Gilsenan, to go  
24 over with Mr. Gilsenan discovery relating to the  
25 charges, discuss his options, whether to engage in plea

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2 negotiations, or whether to ask for a preliminary  
3 hearing. So for those reasons, time is excluded in the  
4 interest of justice between today and July 23rd under 18  
5 U.S.C. Section 3161(h)(7).

6 Mr. Gilsenan, let me go back to the question  
7 you asked about who would hear -- you're talking about  
8 who would hear a motion, your opposition to a motion to  
9 stay?

10 MR. GILSENAN: That's correct, your Honor.  
11 And actually, your Honor, after the Court put the other  
12 information on the record, I guess I would object, if I  
13 can, I'm not sure if I even can, to the government --  
14 giving the government until Thursday. If there is a bed  
15 open tomorrow for him to be picked up tomorrow, I plan  
16 to file that opposition as soon as I get back to my  
17 computer and the arguments center around the Bail Reform  
18 Act's lack of any mechanism for staying the Magistrate  
19 judge's decision and addresses some issues regarding the  
20 inherent power of the Court to stay a decision.

21 MAGISTRATE JUDGE PAYSON: Officer Nenni, do  
22 you have any reason to believe that the bed would not be  
23 available on Thursday or later than that?

24 PROBATION: Your Honor, there -- I can  
25 confirm from the Salvation Army, but there should still

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2 be a bed on Thursday. They just advised the earliest  
3 they could pick him up from this building would be  
4 tomorrow afternoon.

5 MAGISTRATE JUDGE PAYSON: Okay. I don't  
6 think I've had much difficulty getting somebody into the  
7 Salvation Army in terms of availability.

8 PROBATION: That's correct. I haven't had  
9 that experience yet. Every time I reached out to them,  
10 they've had an open bed.

11 MAGISTRATE JUDGE PAYSON: And that is,  
12 unlike treatment programs that I think sometimes if you  
13 don't get that bed, it's going to go to someone else, I  
14 haven't had that experience with the Salvation Army.  
15 I'm trying to think, in all of my time here, whether I  
16 -- I don't think I've ever entertained a motion or  
17 opposition to a stay, so I'll ask Mr. Marangola, is that  
18 something, that argument over a stay, has been had  
19 before the district court?

20 MR. MARANGOLA: No, Judge. I've never had  
21 that. We filed the motion and then we get schedule from  
22 the district judge as to what they want to do in terms  
23 of proceedings after that.

24 MAGISTRATE JUDGE PAYSON: Okay. So I don't  
25 want to speak too quickly in saying that would

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2 necessarily be heard before the district judge. It's  
3 pretty unusual. I think here that a defendant opposes  
4 the motion, opposes the stay as opposed to opposes  
5 substantively. And, you know, I know the last thing you  
6 want is to end up having proceedings over a stay then  
7 end up delaying substantive proceedings before the  
8 district court. But I'm happy to look at your motion.  
9 I don't know whether that would be heard before me or  
10 whether it would be heard before the district court,  
11 whether I would decide it on the papers, whether the  
12 district court would decide it on the papers. In close  
13 cases, I rather routinely do grant a stay or, you know,  
14 and I would investigate whether I had jurisdiction to  
15 stay my own decision pending district court review. I  
16 don't know that anybody has ever told me that I can't do  
17 that. And I've done it routinely. That is not to say I  
18 haven't been wrong for all of these years and other  
19 judges before me and after me. It's a pretty routine  
20 practice here.

21 So file whatever it is that you have to file  
22 and, you know, we'll sort it out from there. But I  
23 would say, I approach this case saying for me, it was a  
24 very hard decision and I have -- and here I think it  
25 would be appropriate, as I've done in many other cases,

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2 to allow the government to be heard before the district  
3 court before the defendant is released where they  
4 contend that there are no conditions that would  
5 adequately assure his return to court as well as safety  
6 of the community. But I am happy to take a look at your  
7 motion and I don't know whether that is, as I said,  
8 something I would decide, something the district court  
9 would decide. But once Mr. Marangola files that motion,  
10 I think that will start the ball rolling in terms of  
11 getting a schedule from the district court.

12 MR. GILSENAN: Your Honor, would the Court  
13 suggest that I file my opposition before the government  
14 files their motion or is that putting the cart before  
15 the horse?

16 MAGISTRATE JUDGE PAYSON: Okay. You were  
17 saying you were going to go back and you intended to  
18 file something today. I don't know what it is. I  
19 haven't seen what it is that you plan to file. No, I  
20 think that you should respond to the government's  
21 motion.

22 MR. GILSENAN: Okay. All right then. Thank  
23 you, your Honor.

24 MAGISTRATE JUDGE PAYSON: Okay.

25 MR. MARANGOLA: Thank you, Judge.

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MAGISTRATE JUDGE PAYSON: Thank you.

CERTIFICATE OF REPORTER.

I certify that the foregoing is a correct transcript  
of the record to the best of my ability of proceedings  
transcribed from the audio in the above-entitled matter.

S/ Karen J. Clark, RPR

Official Court Reporter